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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

LAVERNE SHENEA ANDERSON,

Defendant and Appellant.

B144908

(Los Angeles County
Super. Ct. No. BA198562)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Ruffo Espinosa, Jr., Judge. Affirmed.

John Hardesty, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Marc E. Turchin, Acting Senior Assistant Attorney General, Brad D. Levinson and Nora Genelin, Deputy Attorneys General for Plaintiff and Respondent.

INTRODUCTION

Laverne Shenea Anderson appeals from the judgment entered following a jury trial resulting in her conviction of felony hit and run (Veh. Code, § 2001, subd. (a)) and vehicular manslaughter (Pen. Code, § 192, subd. (c)(1)), and after she admitted she had a prior conviction for robbery, which constituted a “strike” under the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12) and had three prior convictions for which she had served separate prison terms (Pen. Code, § 667.5, subd. (b)). The court sentenced her to an aggregate term of 14 years in state prison. She contends: (1) the court abused its discretion by refusing to strike a prior conviction under the Three Strikes law; and (2) her punishment amounts to cruel and unusual punishment in violation of the United States and California Constitutions.

FACTUAL AND PROCEDURAL HISTORY

On February 5, 2000, at 52nd Street and Central Avenue in Los Angeles, the police found a 1982 Pontiac Firebird crashed into a church stairway. The Firebird was traveling at a speed of 64 to 77 miles per hour when it ran a stop sign for vehicles approaching Central from 52nd, left the pavement, hit several obstacles, and crashed. Upon the police officers’ arrival, the car’s front-seat passenger, Linda Smith, was dead. An autopsy revealed Smith died of multiple traumatic injuries.

Pedestrians told the officers that a woman matching Anderson’s description was involved in the collision and could be found nearby. When the officers approached Anderson, she bore facial cuts; the officers arrested her. Anderson volunteered to the officers that she was driving the car and lost control of it. Anderson told them she tried to help Smith after the collision, but then walked away. A DNA blood test revealed that blood found on the steering wheel of the car was genetically compatible with Anderson.

In defense, Anderson claimed a male in the car was the driver. When she realized the car was traveling too fast, she crawled into the front seat to help the driver slow down. At that point, the car then left the pavement. Anderson’s testimony as to how the accident occurred was impeached by the nature of her injuries and the damage to the car’s interior.

Anderson had cuts to her forehead, a concussion and a fractured jaw, and was hospitalized for eight to 10 days following the accident.

At sentencing, the court read and considered a probation report indicating Anderson was 29 years old. The report reflected a significant juvenile history. In 1983 she had law enforcement contacts for stealing an eyebrow pencil and possessing four marijuana cigarettes. In 1985, she was declared a ward of the juvenile court for committing grand theft. In 1987, as an adult, she was convicted of prostitution. In 1988, she was convicted of attempted robbery and sentenced to state prison for two years. Anderson was released on parole in 1989, but was reimprisoned three times for parole violations occurring between her 1989 release and December 1990. In 1990, she was convicted of prostitution and placed on probation. In 1992, she was convicted of committing a battery upon a prisoner and sentenced to state prison for two years. In 1992, she again committed a battery upon a prisoner and was sentenced to state prison for 12 years. In 1996 she was convicted of possessing alcohol or drugs in prison and was sentenced to state prison for two years. Finally, in 1999, she was convicted of prostitution and placed on probation.

The probation report further revealed that Anderson had engaged in substance abuse from age 12. She used cocaine for seven years and freebased daily, and supported her cocaine addiction by prostitution. After age 16, she led a “street life.”

The investigating police officer told the probation officer that Anderson tested positive for cocaine use on the day of the accident. After the accident, Anderson had telephoned for medical assistance for the victim, then left the accident scene. Her parole of April 1999 was revoked in February 2000. The current incident constituted another parole violation. Due to Anderson’s criminal history, the probation officer recommended a state prison commitment.

The court told counsel it was contemplating selecting the manslaughter offense as the principal term for sentencing purposes. For that offense, the court was inclined to impose a doubled upper term of six years, or 12 years, in state prison. Consecutive to that term, the court was considering imposition of a doubled consecutive term of one-year (one-third the middle term of three years), or two years, for felony hit and run. The court also recited

factors that made Anderson a serious danger to the community. It found in aggravation: (1) a propensity for violence; (2) numerous and increasingly serious prior convictions; (3) prior prison terms; (4) on parole when the current offense was committed; (5) unsatisfactory prior performances on probation and parole; (6) absence of an effort at rehabilitation; (7) lack of remorse; and (8) unrelenting drug use. In mitigation, the court observed Anderson made an admission of guilt at the time she admitted her prior convictions. The court commented to Anderson that the sentence was stiff, but that upon her release from prison she could have a life outside prison if she wished.

The court invited counsel's argument as to sentencing. Anderson's counsel said he had no comments to make as to sentencing, other than the court was on firm ground in reaching its conclusion as to the aggregate term. Counsel said he had explained to Anderson her term was aggravated by her prior criminal record. However, counsel told the court Anderson personally wished to express her view that the sentence was too harsh.

The court explained it had found no justification for striking the prior conviction. Considering Anderson's past record and the current offense, the court concluded Anderson fell within the spirit of the Three Strikes Law. According to the court, the only reason for not imposing the maximum 17-year term was that Anderson owned up to her responsibility for her misconduct admitting her prior convictions.

Addressing the court on her own behalf, Anderson said the day she got on the witness stand she did not testify to what she wanted to say. She said only what trial counsel told her to say. She complained her counsel did not permit her to elicit the statement of an eyewitness.

The court informed Anderson her comments went beyond issues relevant to sentencing and were an attempt to relitigate her guilt. The court expressed the view that her counsel was competent and indicated it was unaware of what had transpired between her and counsel. The court told her it was required to sentence her since she was convicted of the charges.

The court inquired whether the prosecutor wanted to comment. The prosecutor's response was that the imposition of the maximum term was justified.

When Anderson interrupted the court, she was admonished not to speak while the court was talking.

The court sentenced appellant to the aggregate 14-year term, and ordered payment of \$2,800 for the restitution and parole restitution fines.

Anderson interrupted again, and told the court to impose a jail term instead of ordering restitution because she would not pay restitution.

The court asked Anderson if she understood sentencing. Anderson replied “I don’t understand why I’m getting so much time,” and “I don’t want to understand,” and “I don’t care.”

The court responded, “You understand that somebody died?” Anderson said, “Yeah, it was my friend.”

DISCUSSION

We reject the contention the court abused its discretion by refusing to strike a prior conviction under the Three Strikes law. Anderson’s contention is nothing more than an invitation to this court to read the record and rebalance the aggravating and mitigating factors and reach a different and more lenient conclusion than that reached by trial court. This is not the function of a court of appeal on appellate review. The standard of review, rather, is whether there has been an abuse of discretion.

Anderson’s current offense was aggravated. While under the influence of cocaine, she slammed a car into a building at a high rate of speed and instantly killed her front-seat passenger. After calling 911, Anderson left the scene of the accident. Based on the evidence presented at the sentencing hearing, Anderson was addicted to cocaine and made no effort to stop using the substance. She committed robberies to obtain funds to secure cocaine. When the victim of an attempted robbery told her she would not give her money, Anderson viciously slashed the victim’s face with a knife. Moreover, Anderson earned several additional prison terms by assaulting prison guards and abusing substances while in prison. Anderson’s demeanor in court was indicative of a highly manipulative and calloused person. Anderson’s parole compliance was consistently unsatisfactory, and her criminal record was increasingly serious. In view of Anderson’s background and

characteristics, she has failed to demonstrate the court abused its discretion in refusing to sentence her as if she had committed no prior “violent” or “serious” criminal offense. (*People v. Williams* (1998) 17 Cal.4th 148, 158-161; see also, *People v. Garcia* (1999) 20 Cal.4th 490, 503; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529-531; *People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

We also reject the contention Anderson’s 14-year prison sentence constitutes a disproportionate sentence in violation of the ban against cruel and unusual punishment under the United States and California Constitutions. Anderson is a serious recidivist. While she complains about a 14-year state prison term, courts consistently have rejected claims that harsh terms imposed on recidivists violate the ban on cruel and unusual punishment. (*Harmelin v. Michigan* (1991) 501 U.S. 957, 965; *Rummel v. Estelle* (1980) 445 U.S. 263, 284; *People v. Cooper* (1996) 43 Cal.App.4th 815, 820; *People v. Kinsey* (1995) 40 Cal.App.4th 1621, 1630-1631; *People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1134-1137.) We decline to rule otherwise.

DISPOSITION

The judgment is affirmed.

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BOLAND, J.*

We concur:

JOHNSON, Acting P. J.

WOODS, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.